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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,414	11/03/2003	Aline Abergel	231184US26	2863
22850	7590	06/21/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/698,414	Applicant(s) ABERGEL, ALINE	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 19, 21-23, 25-29, 35, 36 and 40-49 is/are rejected.
- 7) ☒ Claim(s) 11-18, 20, 24, 30-34 and 37-39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/3/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

DETAILED ACTION

Applicant's response to the restriction requirement filed 5/1/06 has been acknowledged. Arguments regarding to the restriction have been found to be persuasive, therefore, the restrictions mailed 3/31/2006 have been withdrawn herewith.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 26, 27, 29 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (U.S. Pat. # 5,109,979).

With regard to claims 1 and 29, Cole discloses a packaging device for a product (figs. 1-2) comprising a support (1) having a generally planar shape in the form of a plate (Applicant is noted that "plate" is a matter of terminology and since the support 1 having an elongated shape, it can be considered as a plate) having two faces (see attachment A), the support having at least one cavity (see figs. 1-2), wherein the depth of the cavity (see attachment A) being equal to a thickness of the plate extending between the two faces, the cavity opening on at least one face of the two faces of the support at a first aperture (at 3) and wherein the cavity having a product (col. 1, lines 6-

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10), the device further having an applicator (6) for the product, wherein the applicator being connected to the support by a junction area (8) which is breakable so as to detach the applicator from the support (col. 1, lines 54-56). In regard to claims 2-4, Cole shows the applicator being formed as an extension of the support (see fig. 1-2) and having a thickness less than of the support, the applicator including an elongated handling portion (6b), at least one applicator portion (7) formed at an end of handling portion, wherein the applicator portion having bristles (see figs. 1-2). In regard to claim 5, Cole shows the junction area having an area having a thickness smaller than that of the support (see fig. 2). In regard to claims 26, 27 and 35, Cole shows the product being a make-up sample product (col. 1, lines 42-49).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thierry (IDS cited reference FR 2806709).

With regard to claims 6-7, Cole discloses a packaging device comprising all the claimed limitations in claim 1 as discussed above except for the breakable junction area including a plurality of tabs extending continuously along the applicator. Thierry '709

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discloses a packaging device (fig. 8) comprising a support member (1) and an applicator member (2) attaching to the support member by a plurality of tabs (4) spacing along the applicator. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the plurality of tabs extending along the applicator as taught by Thierry into the packaging device of Cole as an alternative way to hold the applicator to the support.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hunkeler (U.S. Pat. # 6,103,040) in view of Swezey (U.S. Pat. # 3,796,306).

With regard to claim 28, Hunkeler discloses a packaging device (fig. 10) comprising a support (1a, 1b) generally planar in shape and having two faces, the support being traversed by at least one cavity (see fig. 10) which opens on each face of the support via a first and second apertures (fig. 10), wherein the cavity contains a product (10), an adhesive sheet (8) at least partially adhered to a face of the support so as to close the second aperture. Hunkeler fails to show the adhesive sheet being glued in a manner such that it delineates at least partially a housing designed to receive an applicator. Swezey discloses a display package (fig. 12) comprising an adhesive sheet (56) forming a housing (aperture) for holding an item (col. 8, lines 9-15). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the technique of holding an item using the adhesive sheet as taught by Swezey into the packaging device of Hunkeler in order to provide a space to hold an item such as the applicator.

Claims 1, 10, 25, 29, 36, 40-43 and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunkeler in view of Cole.

With regard to claims 1 and 29, 43, Hunkeler discloses a packaging device (fig. 10) comprising a support (1a, 1b) generally planar shape in the form of a plate and having two faces, the support including at least one cavity (see fig. 10) which opens on at least one face of the support (fig. 10), wherein the cavity contains a product (10), the depth of the cavity being equal to the a thickness of the plate (fig. 10). Hunkeler fails to show an applicator being connected to the support by a junction area which is breakable so as to detach the applicator from the support. Cole discloses a packaging device for a product (figs. 1-2) comprising a support (1), an applicator (6) for the product, wherein the applicator being connected to the support by a junction area (8) which is breakable so as to detach the applicator from the support (col. 1, lines 54-56). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the applicator as taught by Cole into the packaging device of Hunkeler for the purpose of solving the hygiene problems such as to ensure each customer using their own applicator and product when sampling. In regard to claims 10 and 36, Hunkeler also shows the cavity extends through the support and opens on both faces (fig. 10), wherein the cavity opens at a second aperture on the face opposite to the face having the first aperture (see fig. 10) and an adhesive sheet (8) closing off the second aperture and forming a bottom of the cavity (fig. 10). In regard to claim 25, Hunkeler also shows a detachable seal (9) closing off the first aperture in a

detachable manner, the seal being removed before use in order to access the product. In regard to claims 40-42, 46-47, Hunkeler discloses the housing being disposed on the edge face of the support, one of the first and second faces of the support and the faces of the support being flat (fig. 10). Hunkeler fails to show the applicator having two flat faces, Cole discloses an applicator having two flat faces (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the applicator as taught by Cole into the packaging device of Hunkeler for the purpose of solving the hygiene problems such as to ensure each customer using their own applicator and product when sampling.

Claims 19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunkeler in view of Cole as applied to claim 1 above, and further in view of Sloane (U.S. Pat. # 5,713,381).

With regard to claims 21-23, Hunkeler in view of Cole discloses a packaging device comprising all the claimed limitations in claims 1 and 10 as discussed above except for a lid generally planar in shape and having two faces, wherein the lid being articulated to the support and a mirror being partially glued to one of the faces of the support. Sloane discloses a package device comprising a support member (2) attached to a lid member (40) generally planar in shape and having two faces, wherein the lid being articulated to the support and a mirror (50) being partially glued to one of the faces of the support. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the lid with the mirror as taught by

Sloane into the packaging device of Hunkeler in view of Cole in order to provide a cover to the package device.

Claims 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunkeler in view of Cole as applied to claim 43 above, and further in view of Thierry.

With regard to claims 44-45, Hunkeler in view of Cole discloses a packaging device comprising all the claimed limitations in claim 29 as discussed above except for the breakable junction area including a plurality of tabs extending continuously along the applicator. Thierry '709 discloses a packaging device (fig. 8) comprising a support member (1) and an applicator member (2) attaching to the support member by a plurality of tabs (4) spacing along the applicator. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the plurality of tabs extending along the applicator as taught by Thierry into the packaging device of Cole as an alternative way to hold the applicator to the support.

Claim 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunkeler in view of Cole as applied to claim 43 above, and further in view of Barratt (U.S. Pat. # 4,167,230).

With regard to claim 48-49, Hunkeler in view of Cole discloses a packaging device comprising all the claimed limitations in claims 29 and 43 as discussed above except for a lid, wherein the lid covers the removable seal and further being articulated

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to the support by an adhesive sheet. Barratt discloses packaging device (figs. 2 and 4) comprising a support member (112), a lid (114) attached to the support member by an adhesive sheet (28, col. 3, lines 25-27). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the lid as taught by Barratt into the packaging device of Hunkeler in view of Cole for the purpose of providing a cover for the packaging device.

Allowable Subject Matter

Claims 11-18, 20, 24, 30-34, 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rowe et al is cited to show the state of the art with respect to a packaging device with a frangible applicator.

The drawings filed 11/03/03 have been approved by the Examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Robyn Doan
Examiner
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